

REMARKS

Attorney for the applicant has carefully reviewed the outstanding Office Action on the above identified application. In the Office Action, the Examiner acknowledged the election of Group I, whereby the non-elected Claims 27-31 have been withdrawn, and Claims 1-26, along with new Claim 32, remain pending in this application. Although the foregoing election was made without traverse, the applicant hereby reserves its right to file a divisional application directed to the non-elected Claims 27-31.

Drawings

The Office Action indicates that the drawings appear to show the rigid member (30) being located outside the of the outer layer (26). Referring to FIG. 7, there is shown a cross-sectioned portion of the ankle brace (10) which shows the rigid member (30) being located between the inner and outer layers (24), (26). Therefore, it is believed that no modifications to the drawings are required.

Claim rejections under 35 U.S.C. 102

Claims 1-4, 6-7, 9, 12-15, 17-23 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 4,862,900 to Hefele. The Examiner's foregoing claim rejections are respectfully traversed for the following reasons.

The present invention relates to an ankle brace that supports the ankle and lower leg, but yet provides a flexible forward surface along a leg, and a flexible

heel. This construction provides for a more normal and anatomical gait and also allows the brace to be comfortably worn with standard footwear because there is less bulk in the rear and front of the brace.

Hefe, on the contrary, discloses an ankle brace that holds the ankle absolutely stationary. For example, in Column 1, Lines 46-54, and Column 4, Lines 1-4 Hefe states: "Another object of this invention is to provide an orthosis or ankle support structure which can be used after an operation of the ankle instead of a plaster and which provides that the **ankle is held absolutely stationary** within the support." "Another object of this invention is to provide an ankle support structure of the type described that provides an **inflexible, dimensionally stable thin shell** snugly surrounding the contour of the leg of a human." "In conclusion, the bow 12, the front wall 18 and the flaps 24 form a one-piece seamless thin-walled shell which in the area of the reinforcement layer is **of highest possible stiffness**." Hefe uses a rigid forward portion and a rigid heel portion to immobilize the ankle and leg. To the extent that there is any flexibility in Hefe, it is along the perimeter of the inflexible shell, and not the forward leg portion, nor under the heel of a person.

Independent Claim 1 of the present invention, as amended, requires "... the body having side areas adjacent the medial and lateral elements of the U-shaped member and, **a flexible front area**...." This flexible front area of the ankle brace of the present invention is not taught or suggested in Hefe, rather, Hefe teaches away from this because it seeks an absolutely stationary ankle, and uses an entirely rigid forward portion to achieve this.

Independent Claim 12 of the present invention, as amended, requires "...a foot engaging portion for receiving a foot in the form of a foot cover including a footbed, a forward edge, and a flexible heel...", and "...the flexible heel extending rearward of the intersection of the rear edges of the leg cover and the footbed...". This flexible heel of the ankle brace of the present invention is not taught or suggested in Hefe. Again, Hefe is directed to keeping the ankle absolutely stationary. Hefe does not disclose a flexible heel. Even if the very edge perimeter of Hefe is flexible, it is to provide some comfort for the user, not to allow for flexibility associated with walking.

Independent Claim 20 of the present invention, as amended, requires "...when positioned on a person, the flexible heel is positioned under a heel of a person's foot." As previously noted, the flexible heel of the ankle brace of the present invention is not present in Hefe, and there is no flexible portion of Hefe that is positioned under a heel of a person's foot.

For at least these reasons, the Applicant's attorney respectfully submits that independent Claims 1, 12, and 20, as amended, are patentable over the Hefe '900 Patent, and are therefore not anticipated by the Hefe '900 Patent. Accordingly, it is respectfully submitted that independent Claims 1, 12, 20 are in condition for allowance, along with claims depending therefrom (i.e., pending Claims 2-11, 13-19, 21-26, and 32).

Claim rejections under 35 U.S.C. 103(a)

Referring to Pages 5-7 of the Office Action, Claims 4-5, 7-8, 10, 15-17 and 23-26 are rejected under U.S.C. 103(a) as being unpatentable over Hefe in view of

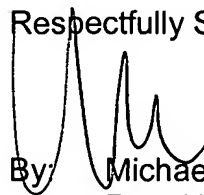
U.S. Patent No. 6,155,997 to Castro. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hefe in view of U.S. Patent No. 5,720,715 to Eriksson.

The Applicant's attorney respectfully submits that, because independent Claims 1, 12, and 20, as amended, are patentable over the references of record, the pending dependent claims are likewise patentable.

In view of the foregoing amendments and remarks, the applicant's attorney respectfully requests reconsideration and allowance of the drawings, and of Claims 1-26, and Claim 32. If such action cannot be taken, the Examiner is cordially invited to place a telephone call to applicant's attorney in order that any outstanding issue may be resolved without the issuance of a further Office Action.

No fees are believed to be due in connection with the submission of this Amendment. If there are any fees due as a result of this Amendment, including extension and petition fees, the Examiner is authorized to charge them to Deposit Account No. 503571.

Respectfully Submitted,



By: Michael Friscia
Reg. No. 33884

McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102
Telephone: (973) 622-4444, Ext. 2336